

## MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ FEBRUARY 7, 2017 ~ 6:00 P.M.

### FORT SMITH PUBLIC SCHOOLS SERVICE CENTER

The meeting was called to order by Mayor Sandy Sanders, presiding. Invocation was given by Director Don Hutchings, followed by the Pledge of Allegiance. On roll call, the following members of the Board were present: Directors Keith Lau, Andre' Good, Mike Lorenz, George Catsavis, Kevin Settle, Tracy Pennartz and Don Hutchings. The Mayor declared a quorum present.

Mayor Sanders inquired if any Board member had any item of business to present that was not already on the agenda. There was none presented.

The minutes of the January 17, 2017 regular meeting was presented for approval. Hutchings, seconded by Lau, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

The Mayor recognized the following Boy Scouts from Troop 110, who were in attendance to earn their Citizenship in the Community badge:

- ▶ Chris Woodruff
- ▶ Garrett Springs
- ▶ Max Howerton

Item No. 1 was an ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Residential Detached to Neighborhood Commercial / Rezoning: from Residential Single Family Duplex Low/Medium Density (RSD-2) to Commercial Light (C-2) by extension located at 4605 South "P" Street*) ~ *Appeal of Planning Commission denial / Appellant: Stuart Ghan, Ghan & Cooper Commercial Properties* ~

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Director of Development Services Wally Bailey briefed the Board on the item advising Mr. Stuart Ghan submitted several applications for Planning Commission consideration to facilitate an off-site, twenty-two (22) space parking lot at 4605 South "P" Street. The subject property is on the north side of South "P" Street between South 46<sup>th</sup> and 48<sup>th</sup> Streets, and contains an area of 0.36 acres. The proposed parking lot is intended to provide employee parking for a future restaurant development at 4620 and 4700 Rogers Avenue, and will have parking lot screening landscaping along the South "P" Street frontage; six (6) foot privacy fencing along the east and west property lines; and, low-bollard lighting. The plan also shows a pedestrian connection/sidewalk to the property on Rogers Avenue. No vehicular access is shown between the commercial buildings on Rogers Avenue and the subject parking lot. The Planning Commission considered a Master Land Use Plan amendment, rezoning, and development plan at their January 10, 2017 meeting to accommodate the development. Additionally, a variance application was considered on the same date by the Board of Zoning Adjustment (BZA), which consists of the same members as the Planning Commission, and is a requirement of Commercial-2 zoning districts whenever the property is required to have street access to a major collector or higher classification street as defined or designated by the Master Street Plan. At said meeting, there were three (3) individuals, i.e. Mr. John Kukar, 4601 South "P" Street; Mr. Fermin Mendoza, 4608 South "P" Street; and Mr. John Davis, 3401 South 79<sup>th</sup> Street, who spoke in opposition to the applications citing the incompatibility of a parking lot next to their houses, devaluation of property, and the additional traffic on South "P" Street. The Planning Commission/BZA considered all four (4) items, i.e. Master Land Use Plan

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amendment, rezoning, development plan and variance, whereby each item was defeated by a vote of one (1) in favor, five (5) opposed and one (1) abstention (two commissioners were absent). Due to the denial of the applications, the applicant filed an appeal to the Planning Commission decisions with regard to the Master Land Use Plan amendment, rezoning and development plan with the City Clerk on January 20, 2017. Per Arkansas Code Annotated 14-7-209(i)(1), an appeal for the variance, defeated by the BZA, must be filed “...only to a court of record having jurisdiction”; therefore, the proposed item consists of only the appeal for the Master Land Use Plan amendment, rezoning and development plan. After discussions with the city attorney, it was determined that several options could be considered by the Board, which were presented as follows:

1. Approve the proposed ordinance conditioned on Mr. Ghan resolving the variance request by asking the BZA to reconsider the variance and/or file the appeal in a court of jurisdiction.
2. Table the proposed ordinance with a statement of intent to approve, but vote to table pending resolution of the variance appeal.
3. Approve the proposed ordinance conditioned on the parking lot property at South “P” Street being platted with the property on Rogers Avenue. This gives the “P” Street property street access to Rogers Avenue which eliminates the requirement for the variance. Mr. Ghan has indicated a willingness to accept this conditional approval, but he still needs the driveway access on “P” Street. The connection and driveway between the “P” Street parking lot and the Rogers Avenue property is limited in width, but could allow a one-way drive connection between the two (2) properties.
4. Sustain the Planning Commission's actions and deny the appeal.

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The following individuals were present to address the Board:

- Rodney H. Ghan  
Ghan & Cooper Commercial Properties

Re: Presented a bound book containing the site plan, landscaping and finishes to be utilized, and photographs of the subject area. He spoke in favor of the item citing such is merely an extension of the existing Commercial-2 zoning classification on "P" Street. He further provided a brief summary of items included within the proposed project to convey assurance all efforts will be made to ensure the lowest impact on surrounding properties, i.e. low impact lighting, landscaping to fit-in with the area, enclosed dumpster area, employee parking only, configuration for the lowest traffic impact on "P" Street, etc.

- John Kukar  
Fort Smith, Arkansas

Re: Advised he owns the residential structure across the street from the subject property and also provided multiple photographs of the area to the Mayor, Board and Administration. He spoke in opposition to the proposed item strongly conveying the project *"is in a neighborhood"* and he *"would rather have a nice duplex"* on the subject site instead of a parking lot.

Lau, seconded by Pennartz, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings. Prior to the vote, Director Lau inquired of certain aspects of the proposed development plan and questioned how many surrounding residential structures are owner-occupied.

Mr. Bailey provided some of the details citing the proposed includes a five (5) foot sidewalk from "P" Street to the Rogers Avenue lot; however, the Board may require the two

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(2) lots to be platted together, which would require the above noted Option 3. With regard to owner-occupied properties, he simply advised there are two (2).

At the request of Director Lau, Mr. Kukar again addressed the Board advising he is currently *"only there on the weekends"*, but will eventually reside at the residence permanently.

With regard to Option 3 noted above and a suggestion of no auto access to the proposed parking lot from "P" Street, Mr. Ghan conveyed no objection.

Director Settle expressed concern with employees possibly hanging-out in the parking lot upon completion of their shifts, which could create an issue for the nearby residents. Due to such, he inquired of the type of restaurant and closing time for the proposed development.

Mr. Ghan advised the proposed restaurant will serve pizza with the latest closing time of 11:00 p.m. on weekends. He further conveyed much assurance that employees hanging-out in the parking lot should not be an issue.

Director Catsavis inquired if the developer maintains an easement or agreement with the adjoining Med-Express Clinic whereby Mr. Ghan responded affirmatively with regard to the easement; however, there is no necessity for an agreement.

The motion remaining on the floor, the members voted as follows: ayes - Lau, Good, Lorenz, Pennartz and Hutchings; nays - Catsavis and Settle. The Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 4-17.

Mr. Bailey requested clarification of the aforementioned adoption of the ordinance whereby Mayor Sanders advised the ordinance was adopted as originally presented with no amendments.

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Item No. 2 was a resolution authorizing and directing the City Administrator to terminate agreements with the River Valley Sports Complex, an Arkansas non-profit corporation, for construction, purchase and operation of a sports facility on city-owned property; and authorizing and directing the City Administrator to seek reimbursement of grant funds dedicated to the project ~ *Catsavis/Lorenz placed on agenda at the January 31, 2017 study session ~*

City Administrator Carl Geffken briefed the Board on the item as discussed at the January 31, 2017 study session. A brief history of the project was provided citing such was originally initiated in March 2014 and the project was to be delivered for use by June 2015. Such completion date has been formally extended twice. The project is still not complete and enough work remains that the River Valley Sports Complex (RVSC) has indicated reluctance to predict an estimated completion date. The proposed resolution authorizes and directs the City Administrator to initiate the termination clause of the construction and purchase agreement, and initiate the cancellation of the lease agreement for the operation of the facility. Further, such authorizes and directs the City Administrator to seek the return of all funds provided by the Western Arkansas Planning and Development District General Improvement Funds Program via the City to the RVSC (and/or its subcontractor) for the installation of utility infrastructure at the facility. Upon approval, the City and its legal counsel will seek to appropriately sever the relationship with RVSC for the subject project.

The following individual was present to address the Board:

- David Harris  
Fort Smith, Arkansas

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Re: Requested confirmation that the City of Fort Smith owns the subject property and improvements, and if the City has a plan to complete the project.

Administrator Geffken confirmed the City of Fort Smith owns the property and there is no current plan to ensure the facility's completion.

Good, seconded by Lorenz, moved adoption of the resolution. Prior to the vote, Director Good noted that RVSC has provided a letter of withdrawal; therefore, he inquired if the Board should consider their withdrawal rather than the proposed termination. Upon ultimate completion of the project, he further reminded that the City will need to consider how the City will address the future day-to-day operation of the facility.

Administrator Geffken advised it's in the best interest of the City to move forward with termination rather than accept the withdrawal; however, he clarified that a settlement may still be reached through the termination process.

Director Catsavis inquired of the current value of the property, including all the improvements made to date.

Administrator Geffken advised such is not yet determined; however, the internal auditor is diligently working on the matter.

Director Lorenz spoke in favor of the proposed item citing the Board has been very patient regarding completion of the project; however, it's *"time to move on."* He further conveyed much hope that the community will pull together and provide assistance, both in-kind and financially, to ensure its completion.

The motion remaining on the floor, the members all voted affirmatively with the exception of Director Lau who abstained. The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-8-17.

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Item No. 3 was an ordinance authorizing the appropriation of General Funds for the preparation of the request for expression of interest for the Intermodal Rail, Logistical Center, Warehouse and Integrated River Port Terminal Project ~ *Hutchings/Lau placed on agenda at the January 31, 2017 study session ~ ♦ Future Fort Smith Item*

Administrator Geffken briefed the Board on the item as reviewed at the January 31, 2017 study session citing the presentation of Vickerman & Associates included a proposal regarding the opportunity to pursue construction of an intermodal rail, logistics center, warehouse, and integrated river port terminal along with a request to issue a request for expression of interest (RFEI) by the Western Arkansas Intermodal Authority (WAIA). The total cost to have Vickerman & Associates analyze, develop, prepare and solicit the RFEI is \$200,500. The City's share is \$40,000; therefore, the proposed item authorizes an appropriation of said amount out of the unobligated balance of the General Fund for this one time use. As of December 31, the estimated unobligated General Fund balance is approximately \$5.8 million.

The following individual was present to address the Board:

- David Harris  
Fort Smith, Arkansas

Re: Noted the economic impact such will have on the city citing he's surprised the Chamber of Commerce was not asked to participate.

Administrator Geffken simply advised the Chamber of Commerce focuses on bringing-in brick & mortar businesses, not infrastructure projects.

Hutchings, seconded by Lorenz, moved adoption of the ordinance. Prior to the vote, several directors expressed concern with the City funds utilized both in the past and the



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proposed, and the progress of the project to date. Although the economic benefit and job creation is beneficial to the region and city, the significant barriers with the river not being deep enough and the United States Corp of Engineers financial inability to address such was also stated as a great concern. The Board conveyed no objection to continue participation and provide the proposed funding; however, future participation and funding may be reconsidered if significant progress is not achieved.

The motion remaining on the floor and the members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 5-17.

Item No. 4 was a resolution authorizing the City Administrator to negotiate an agreement providing for the transfer of water utility service for designated customers to the Locke-Fern and Dollard Road Water Association ~ *Lau/Hutchings placed on agenda at the January 24, 2017 study session ~ ♦Future Fort Smith Item*

Interim Director of Utilities Bob Roddy briefed the Board on the item advising the new Lake Fort Smith 48-inch water transmission line is being constructed in phases, and with each phase, the corresponding portions of the existing 27-inch water transmission line will be retired from service. From 1935, when the 27-inch line was constructed, through the 1980's, the City allowed direct water service connections for both wholesale water systems and individual retail water users. As the 27-inch is phased out, the customers that were directly connected to the line are removed from the new transmission line. One of the phases accomplished was the construction of approximately 7,000 feet of 6-inch water line along State Highway 282, south of Mountainburg, at a cost to the City of \$432,000.

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The aforementioned water line was designed to provide water to thirty (30) private services that were previously directly connected to the 27-inch waterline. According to the Arkansas Public Water System Compliance Summary, Section XN.B.1, "*A minimum pressure of 20 pounds per square inch (psi) shall be maintained, except under emergency conditions such as fire flow or main break.*" In order to comply with such, construction of a pump station is necessary at an estimated cost of \$120,000. As this project has progressed through construction, an alternate cost savings solution is to extend the 6-inch line to connect to the local water utility, Locke-Fem and Dollard Road Waterworks (LFDR), and transfer the responsibility of water service for the aforementioned 30 customers to that entity. Such will eliminate the need to construct a \$120,000 pump station and relieve the City of the responsibility of servicing these customers or performing maintenance on the infrastructure.

Hutchings, seconded by Lorenz, moved adoption of the resolution. Prior to the vote, Director Settle expressed concern with the matter and questioned why the City did not consider billing the impacted residents for the improvements. He further questioned if the City's wholesale users are covering "*their fair share*" for necessary improvements and requested to see "*the calculations.*"

Mr. Roddy reiterated it's been the duty of the City for forty-plus years to provide the water service to 30 residents citing the cost of improvements "*would be more than difficult for the users*" to bare.

Director Lau questioned when the last cost-of-service was calculated and requested a brief legal explanation of the City's "*duty of service.*" He further expressed great concern

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that the City of Fort Smith will not recoup any of the cost for the construction of the line citing the wholesale users should be responsible for at least a portion of the cost.

With regard to the last cost-of-service, Deputy City Administrator Jeff Dingman advised the last cost-of-service was calculated prior to the last water rate increase and Mr. Roddy added the Utility Department is currently working on new calculations.

City Attorney Colby Roe advised that although no formal contracts are in effect with the 30 residents, the City has historically provided water service; therefore, the City simply cannot legally *"just remove"* or disconnect the residents from the service.

Mr. Roddy advised that upon approval and over time, such will eventually result in a financial benefit as the City will no longer be responsible for the maintenance of the water line and construction of the required pump station, as well as the operation and maintenance associated with the aforementioned pump station.

Director Pennartz questioned how many wholesale users are along the subject water line and expressed concern with similar instances in the future.

Deputy Director of Systems Jimmie Johnson advised seven (7) or eight (8) wholesale users are located along the subject line.

Mr. Roddy conveyed much assurance and the opinion of staff is that *"this will not happen again."*

Administrator Geffken reminded the Board that the proposed item merely authorizes him to proceed with negotiations and upon completion of such, the final authorization to transfer ownership of the subject water line will be presented to the Board for consideration.

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The motion remaining on the floor, the members all voted affirmatively with the exception of Director Settle, who voted "no". The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-9-17.

Item No. 5 was a resolution authorizing the Mayor to execute Authorization No. 1 to the agreement with CDM Smith, Inc. for engineering services for the redundant electric service Massard Wastewater Treatment Plant (\$56,200.00 / *Utility Department / Budgeted - 2015 Revenue Bonds*) ♦ *Future Fort Smith Item* • *Consent Decree*

Mr. Roddy briefed the Board on the item advising the design engineering phase is complete and was provided by CDM Smith, Inc. in the amount of \$74,510.00. The proposed Authorization No. 1 will provide construction observation services for the installation of electrical system switching equipment for an amount not-to-exceed \$56,200.00. The secondary power feed installed by Arkansas Oklahoma Gas requires the installation of automatic switching equipment and associated electrical cabling between three (3) buildings on the Massard Wastewater Treatment Plant site. Installation will satisfy a requirement of the Consent Decree.

Lorenz, seconded by Good, moved adoption of the resolution. There being no Director wishing to comment on the item, the members voted as follows: ayes - Lau, Good, Lorenz, Settle and Hutchings; nays - Catsavis and Pennartz. The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-10-17.

Item No. 6 was a resolution authorizing the purchase of a CCTV inspection truck (\$269,650.00 / *Utility Department / Budgeted - 2015 Revenue Bonds*) • *Consent Decree*

Mr. Roddy briefed the Board on the item advising the proposed resolution authorizes the purchase of a CCTV inspection truck for the Sewer Line Maintenance Division of the

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Utilities Department. Currently, the City owns one (1) other CCTV inspection truck, which is approximately fifteen (15) years old. The subject purchase is budgeted as Water and Sewer Capital relative to the Consent Decree Bond Proceeds.

Hutchings, seconded by Lorenz, moved adoption of the resolution. Prior to the vote, Director Settle requested clarification of how many CCTV inspection trucks the City currently owns whereby Mr. Roddy reiterated the City currently has one (1).

The motion remaining on floor and the members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-11-17.

Item No. 7 was a resolution authorizing the purchase of two (2) excavators (\$131,255.96 / Utility Department / Budgeted - 2015 Revenue Bonds) • Consent Decree

Mr. Roddy briefed the Board on the item advising such merely authorizes the purchase of two (2) excavators for the Sewer Line Maintenance Division of the Utilities Department. Such purchase is budgeted as Water and Sewer Capital relative to the Consent Decree Bond Proceeds.

Pennartz, seconded by Hutchings, moved adoption of the resolution. There being no Director wishing to comment on the item and the members all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-12-17.

The Consent Agenda (Item No. 8) was introduced for consideration, the items being as follows:

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- A. Resolution granting a temporary revocable license for the placement of a retaining wall in a public utility easement and authorizing the Mayor to execute agreement (*Request of Evangel Temple*)
- B. Resolution authorizing partial payment to Forsgren, Inc. for the construction of Jenny Lind Road and Ingersoll Avenue Widening Project, AHTD Job 040471, City of Fort Smith Project No. 07-01-A (\$1,587,737.64 / *Budgeted / Engineering Department - Sales Tax Program*) ♦ *Future Fort Smith Item*
- C. Resolution authorizing City Administrator to continue to administer construction contract and authorizing filing of litigation against contractor and surety (*Chaffee Crossing water storage tank*) ~ *Pennartz/Lau placed on agenda at the January 31, 2017 study session* ~ ♦ *Future Fort Smith Item*
- D. Resolution authorizing the Mayor to execute a contract with Morrison Shipley Engineers for the design and construction of the Landfill Loop Trail (\$168,380.00 / *Parks Department / Budgeted - 1/8 Cent Sales & Use Tax*) ♦ *Future Fort Smith Item*
- E. Resolution authorizing the Mayor to execute a lease agreement with the Antioch District Association for Youth and Family, Inc. (*Between North 7th and 8th Streets and North "K" and "L" Streets*) ♦ *Future Fort Smith Item*

Good, seconded by Hutchings, moved approval of all consent agenda items. Prior to the vote and regarding Item No. 8A, Director Hutchings advised of his intent to abstain on the item citing his relationship with the applicant.

With regard to Item No. 8D, Director Settle advised no map was provided; therefore, he, along with Director Pennartz, questioned the location of the subject trail.

Director of Parks and Recreation Doug Reinert advised the trail will be located around the perimeter of the landfill, near the playground and police & fire training facilities. Discussions are forthcoming with regard to the proximity to the aforementioned training facilities; however, he conveyed much assurance all concerns will be appropriately addressed and mitigated prior to construction.

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At the request of Director Good, Director of Sanitation Mark Schlievert advised he maintains no concerns regarding the proposed trail provided all requirements of the Arkansas Department of Environmental Quality (ADEQ) are adhered to and the trail is set far enough away from the footprint of the landfill.

Regarding Item No. 8E, the following individual was present to address the Board:

- Melissa Woodall  
Fort Smith, Arkansas

Re: Spoke in favor of the item citing said agreement will benefit both the City, by reducing its maintenance expense for the property, as well as the community advising Ms. Charolette Tidwell and the Antioch organization is *"the best of the best!"*

The motion remaining on the floor, the members voted affirmatively with the exception of Director Hutchings, who abstained on Item No. 8A, and Director Catsavis, who voted *"no"* on Item No. 8D. The Mayor declared the motion carried and the resolutions were adopted and given Resolution No. R-13-17 through R-17-17 respectively.

Mayor Sanders opened the Officials Forum with the following comments offered:

- Mayor Sanders

- Re:
1. Reminded all of the upcoming Fort Smith Marathon, which is set for Sunday, February 12<sup>th</sup>, and encouraged all to attend and support the runners and event.
  2. Also reminded all of the upcoming ceremonial swearing-in and reception for new Police Chief Nathaniel Clark, which is set from 4:00 p.m. to 6:00 p.m., Thursday, February 9<sup>th</sup>, Fort Smith Convention Center Rotunda.

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- ▶ Director Hutchings

Re: Regarding the above noted Fort Smith Marathon, traffic delays will most certainly be experienced; therefore, he inquired where residents may obtain the route and traffic detour information.

Mayor Sanders advised such may be obtained from the Fort Smith Marathon website.

There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Lorenz, and the members all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 7:50 p.m.

**APPROVED:**



MAYOR

**ATTEST:**



CITY CLERK